

III. REMARKS

Claims 1-40 are pending in this application. Applicants do not acquiesce in the correctness of the rejections and reserve the right to present specific arguments regarding any rejected claims not specifically addressed. Further, Applicants reserve the right to pursue the full scope of the subject matter of the original claims in a subsequent patent application that claims priority to the instant application. Reconsideration in view of the following remarks is respectfully requested.

In the Office Action, claims 1, 5, 7, 10-11, 14-15, 17-18, 22, 24, 27-28, 31-32, 34-35, 36-37, 39 and 40 are rejected under 35 U.S.C. §102(e) as allegedly being anticipated by Tonouchi (U.S. Patent Pub. No. 2002/0004833), hereafter “Tonouchi.” Claims 2-3, 6, 19-20 and 23 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Tonouchi in view of Webb *et al.* (U.S. Patent Pub. No. 2002/0083342), hereafter “Webb.” Claims 4, 12-13, 16, 21, 29-30, 33 and 36 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Tonouchi in view of Bondarenko *et al.* (U.S. Patent No. 6,389,028), hereafter “Bondarenko.” Claims 8-9 and 25-26 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Tonouchi in view of Slotznick (U.S. Patent No. 6,011,537), hereafter “Slotznick.”

A. REJECTION OF CLAIMS 1, 5, 7, 10-11, 14-15, 17-18, 22, 24, 27-28, 31-32, 34-35, 36-37, 39 AND 40 UNDER 35 U.S.C. §102(e)

With regard to the 35 U.S.C. §102(e) rejection over Tonouchi, Applicants assert that the cited reference does not teach each and every feature of the claimed invention. For example, with respect to independent claims 1, 18, and 35, Applicants submit that Tonouchi fails to teach responsive to determining that said access level is currently at a desired maximum, automatically

allocating to an access slot, which specifies a time period during which the scarce resource may be accessed, said requester. In support, the Office cites a passage of Tonouchi that teaches confirming whether an additional reservation would cause the user's number of reservations to exceed an acceptable number of reservations and, if not, executing further processes. Paras. 136-138. These further processes include writing the reservation request to the corresponding time period of the reservation table and sending a reservation confirmation page to the user. Paras. 140-141. To this extent, subsequent to determining whether the additional reservation is valid, Tonouchi merely records the selection and sends the conformation and does not allocate the user to a time period.

In fact, the time period of Tonouchi is not automatically allocated at all, but rather is requested by the user. Pars. 0134-0135. The Office argues that "...the fact that Tonouchi allows the user to confirm the time slot does not mean the allocation is not 'automatic'." Final Office Action, page 8. However, Applicants respectfully submit that this interpretation of Tonouchi is incorrect. Specifically, as shown in the example beginning in para. 0171 of Tonouchi, the user "...writes a time period from 10:00 to 17:00 on Mar. 26, 2000 as a desirable reservation time period composed of a start date and an end date." Par. 0195. Thus, Tonouchi teaches that the user selects the reservation, and not that the user confirms an already allocated reservation.

Furthermore, Tounouchi confirms whether or not maximum number of reservations is exceeded *after* the user has selected the time period and, as such, does not allocate the time period based on a determination that the maximum number of reservations is exceeded. Para. 0134-0136, 0195-0197. In fact, if the maximum number of reservations is exceeded, Tonouchi, rather than allocating a time period, deems the reservation that has been selected by the user to be

unacceptable. Para. 0136, 0138. Thus, a determination in Tonouchi that the maximum number of reservations has been exceeded causes the reservation request to be canceled. Accordingly, nowhere in the passages cited by the Office or elsewhere does Tonouchi teach that its reservation is automatically allocated in response to a determination that an access level is currently at a desired maximum.

In contrast, the claimed invention includes “...responsive to determining that said access level is currently at a desired maximum, automatically allocating to an access slot, which specifies a time period during which the scarce resource may be accessed, said requester.” Claim 1. As such, the requester of the claimed invention does not merely reserve a time period as does the user in Tonouchi, but instead, the requester is automatically allocated to an access slot. Furthermore, unlike the selection of Tonouchi, which is prior to the confirmation, in the claimed invention, the automatic allocation to an access slot is responsive to the determining. Still further, a determination in the claimed invention that the access level is currently at a desired maximum results in an automatic allocation to an access slot and not a cancellation of a reservation request as in Tonouchi. For the above stated reasons, the access slot of the claimed invention is not taught by the reservation of Tonouchi. Accordingly, Applicants respectfully request that the Office withdraw its rejection.

With further respect to independent claims 1, 18, and 35, Applicants submit that Tonouchi fails to teach determining, upon receipt of the request, whether the access level for said scarce resource is currently at a desired maximum. Instead, the passage of Tonouchi cited by the Office teaches that “The contract server...investigates the number of reservations in the time period on which the user performs the reservation request, and confirms whether or not it

exceeds the acceptable number of reservations.” Page 7, par. [0136]. To this extent, Tonouchi confirms for a single user whether or not the user’s allowed number of reservations has been exceeded. However, this confirmation pertains to how many future reservations there exist for a particular user and not the number of users that are currently accessing the resource. This confirmation cannot include the current time period because Tonouchi automatically checks for a reservation containing the current time upon authentication and, if so, connects the user to the service. Para. 0102-0104. As such, the user is only routed to the contract server that performs the confirmation if there is no current reservation. Para. 0104. Thus, the confirmation of Tonouchi is never performed for a user who has a reservation at the current time. Accordingly, the contract server of Tonouchi confirms whether the number of reservations exceeds the acceptable number of reservations only for a future time period of a reservation request, and not for the current point in time.

Furthermore, the investigation of Tonouchi is performed in response to a reservation request for future service and not upon receipt of a request for immediate access. The Office argues that “...if the current time is not filled up then it will be presented to the user thus allowing immediate access.” Final Office Action, page. However, Tonouchi never expressly teaches that this is the case. Instead, Tonouchi only teaches that a user that has no current reservation “...can get access to the Web server and use a reservation set service and a reservation confirmation service. However, it can not get access to the Internet.” Para. 0104. Thus, in making its statement the Office makes a baseless assumption that Tonouchi allows a reservation to be made for a time period that includes the current time. However, Tonouchi never expressly states or implies that this is the case. Every statement or example in Tonouchi

regarding the making of a reservation involves a future period of time. See e.g., paras. 0176, 0191, 0195. Accordingly, nowhere does Tonouchi teach that its contract server determines, upon receipt of a request for immediate access, whether the access level for the resource is currently at a desired maximum.

In contrast, the claimed invention includes “...determining, upon receipt of the request, whether the access level for said scarce resource is currently at a desired maximum.” Claim 1. As such, the determining of the claimed invention does not merely confirm whether the number of reservations in a future time period exceeds the acceptable number of reservations as does the contract server of Tonouchi, but instead determines whether the access level for a scarce resource is currently at a desired maximum. Furthermore, rather than being in response to a reservation request for future service as in Tonouchi, the determining of the claimed invention occurs upon receipt of a request for immediate access. Thus, the determining of the claimed invention is not taught by the contract server of Tonouchi. Accordingly, Applicants respectfully request that the Office withdraw its rejection.

With respect to independent claims 36 and 39 and dependent claims 11, 15, 17, 28, 32 and 34, Applicants respectfully submit that Tonouchi fails to teach or suggest responsive to determining that said access level is currently at a desired maximum, determining whether said scarce resource is able to accommodate immediate access by said late requester. Tonouchi has no provision for accommodating immediate access by a user has missed or gone beyond a time period, but instead, the user in Tonouchi follows the same procedure for reserving a future time period in all cases. Pars. 0136-0138. Specifically, for a user that has exceeded the allotted time, Tonouchi teaches that

The contract server 150 uses the network management server 160, and commands the edge router 220 to stop routing to the Internet 180 and switch the routing destination to the ISP LAN 250 (Step A200). Thus the user *can not get access to the Internet* 180. Para. 0113-0114; emphasis added.

To this extent, there is no special treatment given to a user in Tonouchi who has exceeded the time period.

The Office argues that “...there is nothing different [in the claimed invention] about the method for allowing ‘late’ access from the method for allowing regular access so therefore as discussed above Tonouchi teaches allowing ‘late’ access.” Final Office Action, page 8.

Applicants respectfully disagree. For example, suppose there are three users: regular user, late user and holdover user. Further suppose that regular user, who has no allocated access slot, and late user, who has an access slot that has already expired, attempt to access the scarce resource of the claimed invention while the resource is currently as a desired maximum (e.g., a desired maximum number of users are currently using the scarce resource). Regular user will automatically be allocated an access slot in the future, while the claimed invention will make a further determination for late user as to whether the system can accommodate the late user. A further determination of this sort is also made in the case of holdover user, which is using the scarce resource when the user’s time slot expires. Thus, late user and holdover user both have preferred treatment over regular user. Tonouchi does not teach this type of preferred treatment.

This distinction is borne out in the claims of the invention, wherein upon receipt of a request from normal user, the claimed invention, “...responsive to determining that said access level is at a desired maximum, automatically allocat[es] to an access slot, which specifies a time period during which the scarce resource may be accessed, said requester.” Claim 1. As such, the requestor of a regular request of the claimed invention is not granted immediate access if the

access level is at a desired maximum, but instead is automatically allocated to an access slot. In contrast, if the request is from late user or from holdover user, it is determined "...responsive to determining that said access level is currently at a desired maximum, ...whether the scarce resource can accommodate immediate access by the user to the scarce resource." Claim 36.

Thus, the late requestor of the claimed invention may be granted immediate access even when the access level of the scarce resource is at the desired maximum. Thus, in contrast to Tonouchi in which all scenarios use the same process, the claimed invention uses a different determination for late requests and/or users that have gone beyond their time period than the determination that it uses for regular requests. Thus, the determining step for a late request as included in the claimed invention is not taught by the reservation of a time period in Tonouchi. Accordingly, Applicants request withdrawal of this rejection.

With regard to the Office's other arguments regarding dependent claims, Applicants herein incorporate the arguments presented above with respect to independent claims listed above. In addition, Applicants submit that all dependant claims are allowable based on their own distinct features. However, for brevity, Applicants will forego addressing each of these rejections individually, but reserve the right to do so should it become necessary. Accordingly, Applicants respectfully request that the Office withdraw its rejection.

B. REJECTION OF CLAIMS UNDER 35 U.S.C. §103(a)

With regard to the 35 U.S.C. §103(a) rejections, Applicants submit that each claim in the rejections includes at least one of the features of the above claims and/or depends from one of the above claims. As such, Applicants herein incorporates the arguments presented above.

Furthermore, Applicant submits that all dependant claims are allowable based on their own distinct features. Since the cited art does not teach each and every feature of the claimed invention, Applicants respectfully request withdrawal of this rejection.

IV. CONCLUSION

In addition to the above arguments, Applicants submit that each of the pending claims is patentable for one or more additional unique features. To this extent, Applicants do not acquiesce to the Office's interpretation of the claimed subject matter or the references used in rejecting the claimed subject matter. Additionally, Applicants do not acquiesce to the Office's combinations and modifications of the various references or the motives cited for such combinations and modifications. These features and the appropriateness of the Office's combinations and modifications have not been separately addressed herein for brevity. However, Applicants reserve the right to present such arguments in a later response should one be necessary.

In light of the above, Applicants respectfully submit that all claims are in condition for allowance. Should the Examiner require anything further to place the application in better condition for allowance, the Examiner is invited to contact Applicants' undersigned representative at the number listed below.

Respectfully submitted,



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